

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WASHINGTON

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

3 Aug 28, 2019

SEAN F. MCAVOY, CLERK

4 RALPH J.,

5 Plaintiff,

7 v.

8 ANDREW M. SAUL,  
9 COMMISSIONER OF SOCIAL  
10 SECURITY,<sup>1</sup>

11 Defendant.

No. 1:18-CV-3164-JTR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

13 **BEFORE THE COURT** are cross-motions for summary judgment. ECF  
14 No. 13, 14. Attorney D. James Tree represents Plaintiff; Special Assistant United  
15 States Attorney Franco L. Becia represents the Commissioner of Social Security  
16 (Defendant). The parties have consented to proceed before a magistrate judge.  
17 ECF No. 7. After reviewing the administrative record and briefs filed by the  
18 parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and  
19 **DENIES** Plaintiff's Motion for Summary Judgment.

20 **JURISDICTION**

21 Plaintiff filed an application for Supplemental Security Income (SSI)  
22 alleging disability since September 1, 2014, due to degenerative disc disease,  
23 Hepatitis C, cirrhosis of the liver, osteoporosis, depression, right wrist pain, left  
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25 <sup>1</sup>Andrew M. Saul is now the Commissioner of the Social Security  
26 Administration. Accordingly, the Court substitutes Andrew M. Saul as the  
27 Defendant and directs the Clerk to update the docket sheet. *See* Fed. R. Civ. P.  
28 25(d).

1 foot pain from fracture, back pain from crush injury to L5, GERD, neck pain,  
2 mental disability, and broken collar bone. Tr. 252, 273. Plaintiff's application was  
3 denied initially and upon reconsideration.

4 Administrative Law Judge (ALJ) Eric S. Basse held a hearing on May 8,  
5 2017, Tr. 73-126, and issued an unfavorable decision on July 6, 2017, Tr. 18-30.  
6 The Appeals Council denied review on June 23, 2018. Tr. 1-5. The ALJ's July  
7 2017 decision thus became the final decision of the Commissioner, which is  
8 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this  
9 action for judicial review on August 24, 2018. ECF No. 1, 4.

#### 10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing transcript, the  
12 ALJ's decision, and the briefs of the parties. They are only briefly summarized  
13 here.

14 Plaintiff was born on October 17, 1963, and was 50 years old on the alleged  
15 disability onset date, September 1, 2014. Tr. 252. He completed the 10th grade in  
16 high school and completed Job Corps food service training in 1981. Tr. 79, 274,  
17 514. Plaintiff's disability report indicates he stopped working on August 31, 2005,  
18 because of his condition. Tr. 273.

19 Plaintiff testified at the administrative hearing held on May 8, 2017, that he  
20 lived with his mother and would occasionally help with yard work. Tr. 84-86.  
21 Plaintiff stated he also recently started working part-time (nine to 12 hours per  
22 week) at Burger King and periodically volunteered at the St. Vincent De Paul food  
23 bank. Tr. 79-84. However, he indicated he would not be able to work eight hours  
24 a day, five days a week because it would be too painful. Tr. 92-93. Plaintiff  
25 testified he continued to work, despite his back pain, because he liked to work and  
26 stay busy. Tr. 98. He stated he would take 800 milligrams of Ibuprofen, as  
27 needed, when he started to feel pain. Tr. 99, 101.

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1 In his free time, Plaintiff would watch television, take his girlfriend out to  
2 eat, and go to a Planet Fitness gym. Tr. 110-112. He did not have a driver's  
3 license at the time of the administrative hearing. Tr. 112.

#### 4 **STANDARD OF REVIEW**

5 The ALJ is responsible for determining credibility, resolving conflicts in  
6 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
7 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
8 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
9 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
10 only if it is not supported by substantial evidence or if it is based on legal error.  
11 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
12 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
13 1098. Put another way, substantial evidence is such relevant evidence as a  
14 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
15 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
16 rational interpretation, the Court may not substitute its judgment for that of the  
17 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
18 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
19 administrative findings, or if conflicting evidence supports a finding of either  
20 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
21 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
22 supported by substantial evidence will be set aside if the proper legal standards  
23 were not applied in weighing the evidence and making the decision. *Browner v.*  
24 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

#### 25 **SEQUENTIAL EVALUATION PROCESS**

26 The Commissioner has established a five-step sequential evaluation process  
27 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
28 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through

four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show there are other jobs in the national economy that the claimant can perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an adjustment to other work in the national economy, the claimant will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

#### **ADMINISTRATIVE DECISION**

On July 6, 2017, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since the application date, October 7, 2014. Tr. 20.

At step two, the ALJ determined Plaintiff had the following severe impairments: degenerative disc disease, liver disease/cirrhosis, history of left foot fracture with open reduction internal fixation, and major depressive disorder. Tr. 20.

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments. Tr. 21.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and determined he could perform light work with the following limitations: he could only occasionally climb ramps and stairs, but never climb ladders, ropes, or scaffolds; he could only occasionally balance, kneel, stoop, crouch, and crawl; he could be exposed to no more than a moderate noise level; he could not be required to engage in verbal communication other than periodic incidental discussions with

1 co-workers; he could not be required to conduct job tasks over the phone or tasks  
2 that required careful verbal instructions; he could be exposed to no more than  
3 occasional vibration and hazards such as unprotected heights and moving  
4 machinery; and he could perform simple, routine tasks and may have intermittent  
5 disruptions of attention and concentration due to his pain symptoms and mental  
6 perceptions, but these would not preclude the ability to perform simple tasks within  
7 an average schedule and workweek the majority of the time. Tr. 22-23.

8 At step four, the ALJ determined Plaintiff has no past relevant work. Tr. 28.

9 At step five, the ALJ found that based on the testimony of the vocational  
10 expert, and considering Plaintiff's age, education, work experience and RFC,  
11 Plaintiff could perform other jobs present in significant numbers in the national  
12 economy, including the jobs of marker; assembler, small products II; and garment  
13 folder. Tr. 29-30. The ALJ thus concluded Plaintiff was not under a disability  
14 within the meaning of the Social Security Act at any time from October 7, 2014,  
15 the date the disability application was filed, through the date of the ALJ's decision,  
16 July 6, 2017. Tr. 30.

## 17 ISSUES

18 The question presented is whether substantial evidence supports the ALJ's  
19 decision denying benefits and, if so, whether that decision is based on proper legal  
20 standards.

21 Plaintiff contends the ALJ erred (1) in rejecting Plaintiff's symptom  
22 testimony; and (2) in assessing the medical opinion evidence. ECF No. 13 at 1.

## 23 DISCUSSION

### 24 A. Plaintiff's Symptom Testimony

25 Plaintiff first argues the ALJ erred by rejecting his symptom testimony for  
26 reasons which were not specific, clear and convincing. ECF No. 13 at 8-12.

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1 It is the province of the ALJ to make credibility determinations. *Andrews*,  
2 53 F.3d at 1039. However, the ALJ's findings must be supported by specific  
3 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent  
4 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's  
5 testimony must be "specific, clear and convincing." *Lester v. Chater*, 81 F.3d 821,  
6 834 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must  
7 identify what testimony is not credible and what evidence undermines the  
8 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,  
9 918 (9th Cir. 1993).

10 In this case, the ALJ found Plaintiff's medically determinable impairments  
11 could reasonably be expected to cause the alleged symptoms; however, Plaintiff's  
12 statements concerning the intensity, persistence and limiting effects of those  
13 symptoms were not entirely consistent with the medical and other evidence of  
14 record. Tr. 24.

15 The ALJ first determined Plaintiff's treatment record failed to establish more  
16 restrictive functioning than outlined in his RFC assessment. Tr. 24.

17 A lack of supporting objective medical evidence is a factor which may be  
18 considered in evaluating an individual's credibility, provided it is not the sole  
19 factor. *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991) (Once a claimant  
20 produces objective medical evidence of an underlying impairment, an adjudicator  
21 may not reject the claimant's subjective complaints based solely on a lack of  
22 objective medical evidence to fully corroborate the alleged severity of pain.);  
23 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006) (An ALJ may not  
24 make a negative credibility finding "solely because" the claimant's symptom  
25 testimony "is not substantiated affirmatively by objective medical evidence.").

26 The ALJ noted Plaintiff had a history of back pain that predated his alleged  
27 onset date. Tr. 24. However, the ALJ found no indication of nerve impingement,  
28 Tr. 654-655, April 2017 imaging showed Plaintiff's compression fractures at L4

1 and T12 had been stable since 2010, Tr. 870-871, examinations persistently  
2 showed full strength and sensation, Tr. 427, 477, 970, range of motion was only  
3 occasionally decreased, Tr. 691, 970 (normal range of motion noted), and straight  
4 leg raise was positive only on the right, Tr. 468, 477. Tr. 24.

5 With respect to Plaintiff's mental health, a June 2015 consultative  
6 psychiatric evaluation with Greg D. Sawyer, M.D., Ph.D., revealed that although  
7 Plaintiff continued to take psychiatric medications, he did not feel he was  
8 depressed and wanted to discontinue the medications as he believed they were  
9 useless, but continued to take the medications because he understood if he stopped,  
10 he would lose his state benefits. Tr. 514. In November 2014, Plaintiff had no  
11 complaints of depression or anxiety, Tr. 427, and in December 2014 his mental  
12 status exam was normal, Tr. 451 (noting "Alert and oriented x3. Mood and affect  
13 normal."). Plaintiff did present for mental health treatment at Comprehensive  
14 Mental Health in June 2015, Tr. 677, however, he only attended three  
15 appointments before he was discharged for failing to keep appointments and  
16 reschedule, Tr. 685, and there are no further notations of any therapy in the record.  
17 Tr. 26. Plaintiff's mental status examinations continued to be within normal limits,  
18 Tr. 754 (noting appropriate mood and affect, appropriate behavior, and normal  
19 attention span and concentration), and his insomnia symptoms were noted to be  
20 "well controlled" with medication, Tr. 757.

21 Based on the foregoing, the medical record does not align with Plaintiff's  
22 allegations of completely disabling physical and mental symptoms in this case.  
23 Consequently, the ALJ's finding that Plaintiff was not as limited as he has alleged  
24 is supported by substantial evidence.

25 The ALJ additionally indicated Plaintiff had largely undergone only  
26 conservative treatment measures. Tr. 25.

27 Evidence of "conservative treatment" is sufficient to discount a claimant's  
28 testimony regarding severity of an impairment. *Parra v. Astrue*, 481 F.3d 742, 751

1 (9th Cir. 2007); *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (finding  
2 conservative treatment suggests a lower level of both pain and functional  
3 limitation).

4 At the administrative hearing Plaintiff testified he would take Ibuprofen, as  
5 needed, for his pain. Tr. 25, 99, 101; *see Parra*, 481 F.3d at 750-751 (being treated  
6 with over-the-counter pain medication is an example of “evidence of ‘conservative  
7 treatment’” that is “sufficient to discount a claimant’s testimony regarding severity  
8 of an impairment.”). As indicated by the ALJ, although Plaintiff stated he was not  
9 interested in taking medication that had the potential for addiction, such as  
10 narcotics, there was no indication he had been offered a prescription for these  
11 medications. Tr. 25. Plaintiff did try epidural steroid injections in 2014, but he  
12 stopped those injections later that year and did not receive any treatment, other  
13 than medication management, until he presented for some chiropractic adjustments  
14 in mid-2016. Tr. 25, 400-420, 689-723. Following the chiropractic appointments,  
15 Plaintiff received very minimal treatment. Tr. 25.

16 Plaintiff’s history of conservative treatment for his symptoms was a  
17 sufficient reason to discount his testimony regarding the severity of his  
18 impairments.

19 The ALJ next noted inconsistencies within the record that detracted from  
20 Plaintiff’s reliability regarding his impairments. Tr. 25-26.

21 In determining credibility, an ALJ may engage in ordinary techniques of  
22 credibility evaluation, such as considering claimant’s reputation for truthfulness  
23 and inconsistencies in claimant’s testimony. *Burch v. Barnhart*, 400 F.3d 676, 680  
24 (9th Cir. 2005); *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). When  
25 a claimant fails to be a reliable historian, “this lack of candor carries over” to other  
26 portions of his testimony. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

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1 Contrary to Plaintiff's testimony at the administrative hearing, Tr. 94, the  
2 record contains no complaints of balance difficulties and no treatment for falls  
3 during the relevant time period. Tr. 25. The ALJ also mentioned Plaintiff reported  
4 to his providers that he had been abstinent from alcohol "for many years," Tr. 25,  
5 514, 816 (no alcohol for prolonged period of time), yet elsewhere in the record he  
6 admitted to occasional alcohol use, Tr. 514, 864, 867. Furthermore, with respect to  
7 Plaintiff's alleged memory deficits, the ALJ noted that Plaintiff's alleged inability  
8 to recall his own telephone number, Tr. 516, was inconsistent with his ability to  
9 multi-task during his shifts at Burger King. Tr. 26, 81-83. The ALJ further  
10 indicated Plaintiff's ability to run the broiler at Burger King was inconsistent with  
11 his claim that he was unable to twist/turn side-to-side or turn to reach. Tr. 25-26.

12 The ALJ properly found the foregoing inconsistencies detracted from  
13 Plaintiff's reliability regarding his impairments.

14 The ALJ next concluded Plaintiff's activities were inconsistent with greater  
15 limitations than as assessed by the ALJ. Tr. 25-26. It is well-established that the  
16 nature of daily activities may be considered when evaluating credibility. *Fair v.*  
17 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

18 The ALJ noted, contrary to Plaintiff's complaints of debilitating back pain,  
19 that Plaintiff was able to volunteer at a food bank, lifting 10 to 15 pounds, and  
20 work three-hour shifts on his feet at Burger King for several days in a row. Tr. 25,  
21 79-83. The ability to perform even part-time work can be considered in assessing a  
22 claimant's credibility. *Bray v. Comm'r Social Security Admin.*, 554 F.3d 1219,  
23 1227 (9th Cir. 2009) (finding the ALJ properly discounted the claimant's  
24 testimony because she recently worked as a personal caregiver for two years and  
25 had since sought out other employment).

26 It was proper for the ALJ to find Plaintiff's work activities were inconsistent  
27 with his allegations of totally disabling symptoms and thus detracted from his  
28 overall credibility. *See Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012)

1 (“Even where [a claimant’s daily] activities suggest some difficulty functioning,  
2 they may be grounds for discrediting the claimant’s testimony to the extent that  
3 they contradict claims of a totally debilitating impairment.”).

4 Finally, the ALJ noted an instance indicative of secondary gain motivation.  
5 Tr. 26.

6 The Ninth Circuit has recognized that an ALJ may properly consider the  
7 issue of motivation or secondary gain in assessing credibility. *Matney v. Sullivan*,  
8 981 F.2d 1016, 1020 (9th Cir. 1992); *Tidwell v. Apfel*, 161 F.3d 599, 602 (9th Cir.  
9 1998); *Gaddis v. Chater*, 76 F.3d 893, 896 (8th Cir. 1996) (allowing an ALJ to  
10 judge credibility based on a strong element of secondary gain).

11 As discussed above, Plaintiff mentioned in the June 2015 consultative exam  
12 with Dr. Sawyer that he continued to take psychiatric medications only because he  
13 believed if he stopped, he would lose his state benefits. Tr. 514, 517 (Plaintiff  
14 related “[h]e does not believe that he has anything wrong with him.”). As found by  
15 the ALJ, it appears Plaintiff only took psychiatric medications to retain state  
16 benefits. Tr. 26, 514 (indicating Plaintiff “does not feel that he is depressed, and  
17 he would like to discontinue [the medications]. He just cannot right now”), 517  
18 (stating Plaintiff “tells me that he has felt depressed, and he knows what it is like,  
19 and he does not feel that right now”).

20 The ALJ is responsible for reviewing the evidence and resolving conflicts or  
21 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.  
22 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in  
23 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in  
24 determining whether the ALJ’s decision is supported by substantial evidence and  
25 may not substitute its own judgment for that of the ALJ even if it might justifiably  
26 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After  
27 reviewing the record, the Court finds the ALJ provided clear and convincing  
28 reasons, which are fully supported by the record, for finding Plaintiff’s symptom

1 allegations were not entirely credible in this case. The ALJ did not err in this  
2 regard.

3 **B. Medical Opinion Testimony**

4 Plaintiff next contends the ALJ erred by failing to provide legally sufficient  
5 reasons for rejecting the medical opinions of treating doctor Jeremiah Crank, M.D.,  
6 nonexamining doctor Brent Packer, M.D., and consultative psychiatric evaluator  
7 Gregory D. Sawyer, M.D., Ph.D. ECF No. 13 at 13-19.

8 In a disability proceeding, the courts distinguish among the opinions of three  
9 types of acceptable medical sources: treating physicians, physicians who examine  
10 but do not treat the claimant (examining physicians) and those who neither  
11 examine nor treat the claimant (nonexamining physicians). *Lester*, 81 F.3d at 830.  
12 A treating physician's opinion carries more weight than an examining physician's  
13 opinion, and an examining physician's opinion is given more weight than that of a  
14 nonexamining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004);  
15 *Lester*, 81 F.3d at 830. In weighing the medical opinion evidence of record, the  
16 ALJ must make findings setting forth specific, legitimate reasons for doing so that  
17 are based on substantial evidence in the record. *Magallanes v. Bowen*, 881 F.2d  
18 747, 751 (9th Cir. 1989). Moreover, the ALJ is required to set forth the reasoning  
19 behind his or her decisions in a way that allows for meaningful review. *Brown-*  
20 *Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (finding a clear statement of  
21 the agency's reasoning is necessary because the Court can affirm the ALJ's  
22 decision to deny benefits only on the grounds invoked by the ALJ). "Although the  
23 ALJ's analysis need not be extensive, the ALJ must provide some reasoning in  
24 order for us to meaningfully determine whether the ALJ's conclusions were  
25 supported by substantial evidence." *Treichler v. Comm'r of Soc. Sec. Admin.*, 775  
26 F.3d 1090, 1103 (9th Cir. 2014).

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1           **1.     Jeremiah Crank, M.D.**

2           Dr. Crank completed DSHS Physical Functional Evaluation form reports in  
3 March 2014 (six months prior to the alleged onset date)<sup>2</sup> and November 2014. Tr.  
4 390-392, 421-423. Dr. Crank marked Plaintiff's back pain as severe, Tr. 391, 422,  
5 and checked a box indicating Plaintiff would be limited to sedentary work as a  
6 result of the severe back pain, Tr. 392, 423.

7           The ALJ found the form reports unpersuasive. Tr. 27. The ALJ gave  
8 minimal weight to Dr. Crank's reports, finding range of motion testing was noted  
9 as completely normal, Tr. 425, there was no explanation or documented  
10 examination results supporting the limitation findings,<sup>3</sup> Plaintiff's strength and  
11 sensation were both noted as normal, Tr. 468, straight leg raise was positive only  
12 on the right, Tr. 468, and subsequent clinical notes include very little treatment for  
13 his back complaints. Tr. 27.

14           The foregoing rationale provided by the ALJ is fully supported. The ALJ  
15 thus provided specific and legitimate reasons for his findings, and his interpretation  
16 was based on substantial evidence. The Court determines the ALJ's analysis with  
17 respect to Dr. Crank's 2014 Physical Functional Evaluation form reports is  
18 appropriate.

19           **2.     Brent Packer, M.D.**

20           In November 2014, Dr. Packer completed a "Review of Medical Evidence"  
21 form report. Tr. 443-447. Dr. Packer reported a review of the record showed  
22 Plaintiff had a marked limitation with respect to his postural restrictions and he  
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24           <sup>2</sup>See *Fair v. Bowen*, 885 F.2d 597, 600 (9th Cir. 1989) (medical opinions  
25 that predate the alleged onset of disability are of limited relevance).

26           <sup>3</sup>An ALJ's rejection of a check-box report that does not contain an  
27 explanation of the bases for the conclusions made is permissible. See *Crane v.*  
28 *Shalala*, 76 F.3d 251, 253 (9th Cir. 1996)

1 was thus limited to the performance of only sedentary exertion level work.<sup>4</sup> Tr.  
2 444. Dr. Packer also wrote that Plaintiff's spine condition met Listing 1.04A. Tr.  
3 446.

4 The ALJ found Dr. Packer's report unpersuasive because he did not examine  
5 Plaintiff and only relied on the records from Dr. Crank and earlier medical reports.  
6 Tr. 27. The ALJ indicated he accorded minimal weight to the form report of Dr.  
7 Packer for the same reasons he provided for his assessment of Dr. Crank's report.  
8 Tr. 27.

9 The ALJ did not reopen the unfavorable decision issued by the prior ALJ,  
10 Tr. 18, therefore, records predating the application date in this case are from  
11 outside the relevant time period. As such, all records reviewed by Dr. Packer,  
12 other than Dr. Crank's November 2014 form report, are from outside of the  
13 relevant time period. Tr. 446. Evidence from outside of the relevant time period  
14 can be deemed useful as background information; however, it is irrelevant to the  
15 extent it does not address Plaintiff's medical status during the period at issue in this  
16 action. *See Fair*, 885 F.2d at 600.

17 All records reviewed by Dr. Packer, other than Dr. Crank's November 2014  
18 report, are not relevant for purposes of the instant disability application. Moreover,  
19 as discussed above, the ALJ provided adequate rationale, supported by substantial  
20 evidence, for rejecting the November 2014 form report of Dr. Crank. *Supra*.  
21 Accordingly, Dr. Packer's report is not based on pertinent information. The Court  
22 thus concludes the ALJ appropriately accorded minimal weight to Dr. Packer's  
23 reviewing opinion.

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27 <sup>4</sup>Dr. Packer later writes within the same form report that Plaintiff's highest  
28 work activity should be limited to "less than sedentary." Tr. 446.

1           **3. Gregory D. Sawyer, M.D.**

2           On June 24, 2015, Dr. Sawyer completed a comprehensive psychiatric  
3 evaluation of Plaintiff. Tr. 511-518.

4           It was noted Plaintiff's chief complaint at the time of the evaluation was  
5 "I'm here because I'm disabled," Tr. 511, but Plaintiff also informed Dr. Sawyer  
6 he was not sure why he was there, Tr. 513. In fact, Plaintiff specifically stated he  
7 did not feel he was depressed. Tr. 514, 517. As stated elsewhere in this order,  
8 Plaintiff reported to Dr. Sawyer that he was taking psychiatric medications at that  
9 time, but the only reason he continued to take those medications was because he  
10 understood that if he discontinued use, he would lose his state benefits. Tr. 514.  
11 Dr. Sawyer noted Plaintiff was able to concentrate on the exam, follow questions,  
12 and give appropriate answers. Tr. 515. However, Dr. Sawyer found Plaintiff was  
13 not able to follow a three-step command. *Id.* Dr. Sawyer indicated Plaintiff's  
14 recent and remote memory were intact, but his recall and retention were impaired.  
15 Tr. 516.

16           Dr. Sawyer diagnosed major depressive disorder, mild, possibly recurrent,  
17 without psychotic features, but opined Plaintiff would not benefit from mental  
18 health treatment. Tr. 517. He assessed that Plaintiff would "have difficulty"  
19 performing detailed and complex tasks, accepting instructions from supervisors,  
20 attempting to understand, carry out and remember complex and one or two-step  
21 instructions, attempting to perform work activities on a consistent basis without  
22 special or additional instruction, and attempting to sustain concentration and persist  
23 in work-related activity at a reasonable pace. Tr. 517-518. However, he further  
24 opined Plaintiff would have no difficulty performing simple and repetitive tasks,  
25 attempting to maintain effective social interactions on a consistent and independent  
26 basis, attempting to maintain regular attendance in the workplace, attempting to  
27 complete a normal workday or workweek without interruptions, and attempting to  
28 deal with the usual stresses encountered in the workplace. Tr. 517-518.

1 The ALJ assigned “some weight” to the opinion of Dr. Sawyer. Tr. 27-28.  
2 The ALJ found Dr. Sawyer’s conclusion that Plaintiff would not have difficulty  
3 performing simple and repetitive tasks supported, but rejected Dr. Sawyer’s  
4 assessment that Plaintiff would have difficulty accepting instructions from  
5 supervisors, performing work activities on a consistent basis without special or  
6 additional instruction, and sustaining concentration and persisting in work-related  
7 activity at a reasonable pace. Tr. 27-28. The ALJ indicated Dr. Sawyer did not  
8 explain the basis for his assessed limitations (he did not point to any exam findings  
9 to explain his conclusions), he failed to specify whether the assessed limitations  
10 were attributed to Plaintiff’s mental or physical impairments, the limitations were  
11 inconsistent with Plaintiff’s activities (particularly his work at Burger King), and  
12 the limitations were not consistent with the minimal mental health symptoms  
13 noted. Tr. 28.

14 The Court determines the ALJ correctly found that the “will have difficulty”  
15 opinions of Dr. Sawyer, Tr. 27-28, whether based on Plaintiff’s physical or mental  
16 impairments, were neither explained by Dr. Sawyer, nor supported by specific  
17 examination findings. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.  
18 2001) (an ALJ may discredit a physician’s opinion that is conclusory, brief, and  
19 unsupported by the record as a whole or by objective medical findings); *see also*  
20 *Tommasetti*, 533 F.3d at 1041 (holding that the existence of internal  
21 inconsistencies within a physician’s opinion constitutes a specific and legitimate  
22 reason for the ALJ to reject that physician’s opinion concerning the claimant’s  
23 functional limitations). Furthermore, the Court agrees with the ALJ that Dr.  
24 Sawyer’s assessed limitations were not consistent with Plaintiff’s work activities.  
25 As stated by the ALJ, Plaintiff testified he had to stand for three hour shifts and  
26 multitask, and there was no mention of difficulty following the instructions of his  
27 supervisors or the need for additional instructions during these shifts. Tr. 28. The  
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1 limitations are also inconsistent with the unremarkable mental health findings  
2 documented in the record.

3 Based on the foregoing, the Court finds the ALJ provided specific and  
4 legitimate reasons, supported by substantial evidence, for not according weight to  
5 the opinion of Dr. Sawyer that Plaintiff's mental impairments would cause him to  
6 have difficulty with certain work-related activities. The Court concludes that Dr.  
7 Sawyer's opinion in this regard is unsupported and inconsistent with the weight of  
8 the record evidence.

### 9 CONCLUSION

10 Having reviewed the record and the ALJ's findings, the Court finds the  
11 ALJ's decision is supported by substantial evidence and free of legal error.  
12 Accordingly, **IT IS ORDERED:**

13 1. Defendant's Motion for Summary Judgment, **ECF No. 14**, is  
14 **GRANTED.**

15 2. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED.**

16 The District Court Executive is directed to file this Order and provide a copy  
17 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant  
18 and the file shall be **CLOSED.**

19 DATED August 28, 2019.



A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE